

Honorable Thomas S. Zilly

U.S. DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

STRIKE 3 HOLDINGS, LLC, a
Delaware corporation,

Plaintiff,

vs.

JOHN DOE, subscriber assigned IP
address 73.225.38.130,

Defendant.

JOHN DOE, subscriber assigned IP
address 73.225.38.130,

Counter-claimant,

vs.

STRIKE 3 HOLDINGS, LLC, a
Delaware corporation,

Counter-defendant

Case No. 2:17-cv-01731-TSZ

**MOTION TO COMPEL
RESPONSES TO DEFENDANT'S
REQUEST FOR PRODUCTION OF
DOCUMENTS, SET ONE**

**NOTING DATE:
FRIDAY, AUGUST 31, 2018**

ORAL ARGUMENT REQUESTED

NOTICE OF MOTION

Defendant John Doe, subscriber assigned IP address 73.225.38.130 (“Doe”), respectfully requests this Court issue an Order requiring Plaintiff Strike 3 Holdings, LLC’s (“Strike 3”) produce requested documents under FRCP 26, FRCP 34 and FRCP 37 within ten (10) days of the order.

This motion will be heard in the United States District Court, for the Western District of Washington, 700 Stewart St, Seattle, WA 98101, Suite 15229 before the Honorable Thomas J. Zilly, pursuant to the Local Rules, LRC 7(d)(3) for a third Friday noting date on August 31, 2018.

This motion will be based on this motion, the attached declaration, and exhibits, and the documents in the record of this case.

Doe served relevant requests for production of documents and Strike 3 has failed to produce these documents claiming that discovery is “premature”. FRCP 26 indicates that discovery is open and there has been no motion for a protective order. Strike 3’s failure to produce these documents has impaired and is continuing to impair Doe’s ability to prepare for trial.

CERTIFICATE OF COUNSEL PURSUANT TO L.R. 7-3

This motion is made following a number of conferences of counsel pursuant to L.R. 7-3 the last of which took place on August 3, 2018.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case is about electronic evidence. See *First Amended Complaint* “FAC”, Docket 43. Here an overseas and unregulated company, IPP International, U.G., monitors American IP addresses to assist Strike 3 in filing copyright infringement lawsuits AC at ¶25-39. The IPP software is allegedly accurate and “...superior to law enforcement uses” [sic]. *Id.* at 25. Strike 3’s case, and indeed, the other 1000 cases around the country, depend in a large part to the accuracy, veracity, reliability, and integrity of “International IPTracker”.

1 Doe sent his first discovery request to review evidence supporting Strike 3's assertions.
 2 Doe served relevant requests for production of documents and has received nothing. Doe
 3 respectfully requests this Court enter an order compelling production of the requested
 4 documents.

5 **II. PERTINENT FACTS**

6 On November 16, 2017, Strike 3 filed its complaint for copyright infringement. (Docket
 7 1).

8 On April 17, 2018, the parties filed a joint status report. (Docket 31).

9 On May 31, 2018, Doe has served document requests on Strike 3. (Exhibit 1).

10 On July 3, 2018, Strike 3 untimely objected to all production requests. (See Exhibit 2).
 The parties met and conferred pursuant to the local rule. See Edmondson Decl.

11 On August 2, 2018 a follow up letter was sent documenting all of the attempts to resolve
 12 this dispute. (See Exhibit 3).

13 On August 3, 2018, a follow-up conversation took place on Friday, August 3 and
 14 confirmed by email. (See Exhibit 4).

15 **III. Request for Production of Documents, Set One (RPD Set One)**

16 These documents are relevant to Strike 3's claim of infringement and Doe's defenses of
 17 non-infringement. They must be reviewed by DOE's counsel and experts.

18 The categories of these document requests are:

- 19 i) RPD 1-6 = Software and Supporting Software Documentation
- 20 ii) RPD 7-8 = Past Expert Reports
- 21 iii) RPD 9-13 = Electronic Data (PCAP, Torrent Files, etc)
- 22 iv) RPD 14-15 = Copyright Information to support the works at issue
- 23 v) RPD 16-27 = Documents supporting specific allegations made in the Complaint
 or FAC.

24 Strike 3 bears the burden of proof of infringement. At this stage they claim to have
 25 evidence of infringement. Doe needs to review that evidence.

1 **IV. ARGUMENT**

2 a. Discovery was Open on Date of Service under FRCP 26(d)(1)

3 FRCP 26 States:

4 *(d) Timing and Sequence of Discovery.*

5 *(1) Timing. A party may not seek discovery from any source before the parties*
 6 *have conferred as required by Rule 26(f),*

7 The parties had their Rule 26(f) conference prior to filing the joint status report. The
 8 parties did not make any stipulations regarding discovery. At the latest, discovery opened on
 9 April 17, 2018.

10 b. Discovery was served on May 31, 2018 and documents were due on July 2, 2018

11 Under FRCP 26 (A) the party to whom the request is directed must respond in writing
 12 within 30 days after being served or — if the request was delivered under Rule 26(d)(2) — within
 13 30 days after the parties’ first Rule 26(f) conference. A shorter or longer time may be stipulated
 14 to under Rule 29 or be ordered by the court. Strike 3 had thirty days to respond.

15 c. Objections were untimely made

16 Discovery was served on May 31, 2018. Objections were due on June 30, 2018. As this
 17 was a Saturday, the objections had to be served on July 2, 2018. The objections were served on
 18 July 3, 2018 and are untimely.

19 d. Objections were substantively improper

20 Strike 3’s main objection is that the case is “immature”. This is an improper objection
 21 in view of the documents requested.

22 This case was initiated on November 16, 2017. The documents at issue had to have been
 23 reviewed by a number of parties prior to filing suit. For example, the “investigators” reviewed
 24 the data and gave opinions regarding aspects that led to this claim of infringement (Docket 4 and
 25 exhibits thereto). Further, counsel would have had to make a good faith review of this data prior
 26 to filing the complaint and more recently the amended complaint. See generally FRCP 11. As
 27 such, most of the data should be readily at hand – for example the PCAPs evidencing internet

1 transactions. See FAC, Docket 43, Paragraph 32. As such, sending copies of the PCAP's would
2 have taken no time at all.

3 Strike 3 has also emphasized PCAP data in their recent opposition to the motion for a
4 more definitive statement stating in part:

5 *....Defendant also misunderstands the role of a PCAP which, as Plaintiff*
6 *clearly illustrates, contains just two hashes – one of which identifies Defendant's*
7 *IP address and the other identifies the individual piece that Defendant transmitted*
8 *to IPP. FAC at ¶ 38. Accordingly, a PCAP only contains one individual piece and*
9 *does not contain the completed and viewable motion picture, but reassembling*
10 *the pieces captured in various PCAPs can result in a fully playable digital movie.*
11 *Motion at 6. This, in turn, renders Plaintiff's allegation that "Defendant*
12 *downloaded, copied, and distributed a complete copy of Plaintiff's Works" well-*
13 *founded. Original Complaint at ¶ 27; FAC at ¶¶ 24, 39; see also Motion at 6*
14 *(Docket 48, fn 2)*

15 It strikes of procedural gamesmanship to claim that Doe does not know something about
16 the characteristics of PCAP data, when they will not produce the PCAP's at issue.

17 e. Strike 3 should be compelled to produce all documents in ten (10) days

18 Strike 3 has this data in its possession and control. Ten days is adequate time to produce
19 the documents at issue.

20 **V. CONCLUSION**

21 Strike 3 brought this case. It has an obligation to prove up its claims and provide Doe
22 with any relevant evidence. The objections raised are nonsensical and production should be
23 compelled.

24 Respectfully submitted on August 9, 2018

by: /s/ J. Curtis Edmondson

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Attorney for Defendant

CERTIFICATE OF SERVICE

I, J. Curtis Edmondson, hereby certify that on August 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Plaintiff Strike 3 Holdings LLC

DATED this 9th day of August, 2018.

By: /s/ J. Curtis Edmondson
J. Curtis Edmondson